

DEPARTMENT OF THE TREASURY

Internal Revenue Service

26 CFR Part 1

REG-106418-05

RIN 1545-BE34

Guidance Under Subpart F Relating to Partnerships

AGENCY: Internal Revenue Service (IRS), Treasury.

ACTION: Notice of proposed rulemaking by cross-reference to temporary regulations.

SUMMARY: In the Rule and Regulations section of this issue of the **Federal Register**, the IRS is issuing temporary regulations that provide rules for determining whether a controlled foreign corporation's (CFC's) distributive share of partnership income is excluded from foreign personal holding company income under the exception contained in section 954(i). The regulations will affect CFCs that are qualified insurance companies, as defined in section 953(e)(3), that have an interest in a partnership and U.S. shareholders of such CFCs. The text of those temporary regulations also serves as the text of these proposed regulations.

DATES: Written or electronic comments and requests for a public hearing must be received by April 17, 2006.

ADDRESSES: Send submissions to: CC:PA:LPD:PR (REG-106418-05), room 5203, Internal Revenue Service, PO Box 7604, Ben Franklin Station, Washington, DC 20044.

Submissions may be hand-delivered between the hours of 8 a.m. and 4 p.m. to

CC:PA:LPD:PR (REG-106418-05), Courier's Desk, Internal Revenue Service, 1111

Constitution Avenue, NW., Washington, DC, or sent electronically, via the IRS Internet site at www.irs.gov/regs or via the Federal eRulemaking Portal at www.regulations.gov (IRS-REG-106418-05).

FOR FURTHER INFORMATION CONTACT: Concerning the proposed regulations, Kate Y. Hwa, (202) 622-3840; concerning submissions of comments, Treena Garrett, (202) 622-3401 (not toll-free numbers).

SUPPLEMENTARY INFORMATION:

Background

Temporary regulations in Rules and Regulations section of this issue of the **Federal Register** amend the Income Tax Regulations (26 CFR Part 1) relating to the rules under section 954(i) of the Internal Revenue Code (Code) for determining whether a controlled foreign corporation's (CFC's) distributive share of partnership income is excluded from foreign personal holding company income under the exception contained in section 954(i). The text of the temporary regulations also serves as the text of these proposed regulations. The preamble to the temporary regulations explains the temporary regulations and these proposed regulations.

Special Analyses

It has been determined that this proposed regulation is not a significant regulatory action as defined in Executive Order 12866. Therefore, a regulatory assessment is not required. It has also been determined that section 553(b) of the Administrative Procedures Act (5 U.S.C. chapter 5) does not apply to these regulations and, because the regulation does not impose a collection of information on small entities, the Regulatory Flexibility Act (5 U.S.C. chapter 6) does not apply. Pursuant to

section 7805(f) of the Code, this notice of proposed rulemaking will be submitted to the Chief Counsel for Advocacy of the Small Business Administration for comment on its impact on small business.

Comments and Requests for Public Hearing

Before these proposed regulations are adopted as final regulations, consideration will be given to any written (a signed original and eight (8) copies) or electronic comments that are submitted timely to the IRS. The IRS and the Treasury Department request comments on the clarity of the proposed rules and how they can be made easier to understand. All comments will be available for public inspection and copying. A public hearing will be scheduled if requested in writing by any person that timely submits written comments. If a public hearing is scheduled, notice of the date, time, and place for the public hearing will be published in the **Federal Register**.

The IRS and the Treasury Department have become aware of possible uncertainty regarding the application of section 956 in certain transactions involving foreign partnerships. The IRS and the Treasury Department therefore also request comments regarding the proper application of section 956 in the case of a loan by a CFC to a foreign partnership in which one or more partners are domestic corporations that are U.S. shareholders of the CFC. Specifically, comments are requested regarding the circumstances, if any, under which the loan to the foreign partnership should be considered to be the obligation of such partners and, thus, U.S. property for purposes of section 956. The IRS and the Treasury Department are particularly interested in the relevance of (1) the consistent application of section 956 to CFC loans to foreign partnerships, domestic partnerships, foreign branches, and disregarded entities of U.S.

shareholders; (2) the foreign partnership's status as a foreign person; (3) the partners' liability for the partnership's debt under local foreign law; (4) the use of the loan proceeds in business activities located inside or outside of the United States; and (5) the fact that the CFC earnings loaned to the partnership would not have been deferred had they been earned by the partnership.

Drafting Information

The principal author of these regulations is Kate Y. Hwa of the Office of the Associate Chief Counsel (International), IRS. However, other personnel from the IRS and the Treasury Department participated in their development.

List of Subjects in 26 CFR Part 1

Income taxes, Reporting and recordkeeping requirements.

Proposed Amendments to the Regulations

Accordingly, 26 CFR part 1 is proposed to be amended as follows:

PART 1--INCOME TAXES

Paragraph 1. The authority citation for 26 CFR Part 1 continues to read, in part, as follows:

Authority: 26 U.S.C. 7805 * * *

Par. 2. Section 1.954-2 is amended by revising paragraphs (a)(5)(ii)(C) and (a)(5)(iii) Example 2 to read as follows:

§1.954-2 Foreign personal holding company income.

(a) * * *

(5) * * *

(ii) * * *

(C) [The text of the proposed amendment to §1.954-2(a)(5)(ii)(C) is the same as the text for §1.954-2T(a)(5)(ii)C) published elsewhere in this issue of the **Federal Register**.]

(iii) * * *

Example 2. [The text of proposed §1.954-2(a)(5)(iii) Example 2 is the same as the text of §1.954-2T(a)(5)(iii) Example 2 published elsewhere in this issue of the **Federal Register**.]

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Mark E. Matthews,
Deputy Commissioner for Services and Enforcement.